

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES SCHLEGEL and	:	CIVIL ACTION NO. 1:05-CV-0660
KELLY SCHLEGEL,	:	
	:	(Judge Conner)
Plaintiffs	:	
	:	
v.	:	
	:	
WILSON-COOK MEDICAL, INC.,	:	
	:	
Defendant/Third-Party Plaintiff	:	
	:	
v.	:	
	:	
A. DAVID FROEHLICH, M.D., et al.,	:	
	:	
Third-Party Defendants	:	

ORDER

AND NOW, this 20th day of August, 2007, upon consideration of defendant/third-party plaintiff Wilson-Cook Medical, Inc.'s motion (Doc. 81) to strike third-party defendant Holy Spirit Hospital's reply brief (Doc. 79) and new statement of facts (Doc. 80) or, in the alternative, for leave to file a sur-reply,¹ and it appearing that Holy Spirit Hospital's reply brief raises arguments not addressed in its brief in support (Doc. 73) of its motion for summary judgment (Doc. 72), and that Holy Spirit Hospital filed additional statements of material fact (Doc. 80), it is hereby ORDERED that the motion (Doc. 81) is GRANTED as follows:

¹ Attached to the brief in support of the instant motion is Wilson-Cook Medical, Inc.'s proposed sur-reply and response to Holy Spirit Hospital's new statement of facts. (See Doc. 82, Exs. A, B.)

1. Defendant/third-party plaintiff Wilson-Cook Medical, Inc. is granted leave to file a sur-reply.²
2. The Clerk of Court is directed to remove the proposed sur-reply (Doc. 82, Ex. A) from the docket in this case and file it as a sur-reply to the motion for summary judgment (Doc. 72).
3. The Clerk of Court is directed to remove the proposed responsive statement of facts (Doc. 82, Ex. B) from the docket in this case and file it as a statement of facts in response to Holy Spirit Hospital's new statement of facts (Doc. 80).

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

² A party is generally not permitted to use a reply brief to raise new arguments or facts. See, e.g., Interbusiness Bank, N.A. v. First Nat'l Bank of Mifflintown, 328 F. Supp. 2d 522, 529 (M.D. Pa. 2004). However, Holy Spirit Hospital would be permitted to file a subsequent motion for summary judgment raising new arguments and facts because the deadline for such motions in the above-captioned action is October 16, 2007 (see Doc. 71). Therefore, the court will not strike the reply brief and new statement of facts, but will permit Wilson-Cook Medical, Inc. to file a sur-reply and response to the new statement of facts.